IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

Bail Appl..No. 3987 of 2007()

CRIME NO.CR 86/07 OF EXCISE RANGE OFFICE, CHENGANNUR

PETITIONER/2ND ACCUSED

MOHANAN.R.,
S/O.RAJAN K.K., AGED 41 YEARS, VALUKATTIL,
REMA BHAVANAM, KARAKKAD MURI, MULAKKUZHA VILLAGE,
CHENGANNUR TALUK, ALLEPPEY DISTRICT.

BY ADV. SRI.K.RAVEENDRAN
SRI.ANIL KUMAR M.SIVARAMAN

RESPONDENTS: COMPLAINANT/STATE

---

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE EXCISE INSPECTOR,
CHENGANNUR RANGE, CHENGANNUR.

BY PUBLIC PROSECUTOR SRI. P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 3987 of 2007

- -

Dated this the 2nd day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. The alleged incident took place on 29.5.2007. In the shop of the petitioner, the petitioner and the co-accused (A1) were allegedly found to engage in the activity of vending I.M.F.L. without any authority. 2.250 liters of I.M.F.L. in 4 bottles were allegedly seized. According to the police, the petitioner is conducting business in the shop. On seeing the police party the petitioner had allegedly taken to his heels. Investigation is in progress. The petitioner has not been arrested so far. The first accused has been arrested from the spot at the scene. The name of the petitioner figures in the seizure mahazar and occurrence report.

2. According to the petitioner he is absolutely innocent. The theory of running away is false. He is ill and suffers from cancer. In these circumstances it is prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioner.

3. The learned Prosecutor opposes the application. I find merit in the opposition. There are no circumstances justifying the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate. He must then seek regular bail in the ordinary course.

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

tm